



**East Africa Institute of Certified Studies Limited (EAICS) v Amangalia
(Appeal E007 of 2023) [2023] KEELRC 1576 (KLR) (22 June 2023) (Ruling)**

Neutral citation: [2023] KEELRC 1576 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
APPEAL E007 OF 2023**

**AK NZEI, J
JUNE 22, 2023**

BETWEEN

**EAST AFRICA INSTITUTE OF CERTIFIED STUDIES LIMITED
(EAICS) APPELLANT**

AND

BERNARD ONDEGO AMANGALIA RESPONDENT

*(Being an appeal from the ruling and order of the Chief Magistrate's Court
at Mombasa in MC ELRC -E015 if 2021 delivered on 26th January 2023)*

RULING

1. The application before me is the Appellant's Notice of Motion dated February 1, 2023. The Appellant/Applicant seeks the following orders:-
 - a. that there be a stay of execution of the decree in Mombasa CM ELR Case No E015 of 2021 pending hearing and determination of the application.
 - b. that there be a stay of execution of the decree in Mombasa CM ELR Case No E015 of 2021 pending hearing and determination of the appeal herein.
 - c. that costs of the application be provided for.
2. The application is expressed to be brought under order 42 rule 6(1) of the *Civil Procedure Rules* and Section 3A of the *Civil Procedure Act*, and is supported by an affidavit of one Daniel Macharia sworn on February 1, 2023.
3. It is deponed in the said supporting affidavit that:-
 - a. the appeal herein is against the trial Court's orders dated January 26, 2023 dismissing the Appellant's application seeking to set aside an ex-parte judgment of that Court.



- b. that the appeal is arguable and has chances of success.
 - c. that the Appellant is ready and willing to deposit the decretal sum in Court as security for any decree that may ultimately be binding on the Appellant/Applicant.
4. The Respondent filed a replying affidavit on February 7, 2023 setting out the chronology of events leading to the ex parte decree/judgment of the lower Court and appreciating that the Court has discretion to grant a stay of execution in instances where the Appellant deposits the decretal sum in a joint interest earning account.
 5. On February 8, 2023, Counsel for both parties consented to an order for interim stay of execution of the trial Court's decree on condition that the Appellant/Applicant deposited the entire decretal sum in an interest earning bank account held jointly by Counsel for both parties herein. An interim order of stay of execution of the trial Court's decree issued on that basis. The Court was subsequently informed by Counsel that the deposit had been put in place.
 6. The single issue for determination is whether the obtaining interim order for stay of execution should be confirmed based on the security already furnished pending hearing and determination of the appeal herein.
 7. I have perused the memorandum of appeal filed herein. The same was filed within the prescribed time and the grounds of appeal raised therein cannot be said to be frivolous. The appeal is arguable and one that is worth a day in Court. It should, however, be noted that an arguable appeal is not one that must succeed upon presentation of arguments for and against the appeal.
 8. Section 13 of the *Employment and Labour Relations Court Act* provides as follows:-

“A judgment, award, order or decree of the Court shall be enforceable in accordance with the rules made under the *Civil Procedure Act*.”
 9. Rule 32 of the *Employment and Labour Relations Court (Procedure) Rules 2016* provides:-
 - (1) the Registrar shall issue an order in execution of a decree
 - (2) Rules on execution of an order or decree shall be enforceable in accordance with Civil Procedure Rules.”
 10. The provision of the *Civil Procedure Rules* which provides for stay of execution of decrees pending appeal is Order 42 Rule 6 (1) & (2) of the *Civil Procedure Rules* which provides as follows:-
 - (1) no appeal or second appeal shall operate as a stay of execution of proceedings under a decree or order appealed from except in so far as the Court appealed from may order but, the Court appealed from may for sufficient cause order stay of execution of such decree or order, and whether the application for such stay shall have been granted or refused by the Court appealed from, the Court to which such appeal is preferred shall be at liberty, on application being made, to consider such application and to make such order thereon as may to it seem just and any person aggrieved by an order of stay made by the Court from whose decision the appeal is preferred may apply to the appellate Court to have such order set aside.
 - (2) No order for stay of execution shall be made under subrule (1) unless:-
 - a. The court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay, and



b. Such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been made by the applicant.”

11. It is clear from the foregoing that an Applicant seeking a stay of execution must satisfy the Court that substantial loss will result to him unless the stay sought is granted. Such Applicant must also give security for due performance of the decree in issue as may ultimately be binding on him.
12. Although the Appellant did not demonstrate that substantial loss will result to it unless the stay sought is granted, parties recorded an agreement on furnishing of security even before the Court could determine the application. The security has since been furnished by way of depositing of the entire decretal sum in an interest earning account held jointly by counsel for both parties. That security shall continue to be so held pending hearing and determination of the appeal herein.
13. Consequently, and having considered written submissions filed by counsel for both parties, the Appellant’s application dated February 1, 2023 is hereby allowed in the following terms:-
 - a. There will be a stay of execution of the Court’s decree in Mombasa CM ELR Case No E015 of 2021 pending hearing and determination of the appeal herein.
 - b. The decretal sum already deposited in an interest earning bank account held jointly by Counsel for both parties herein shall remain so deposited pending hearing and determination of the appeal herein.
 - c. Costs of the application will be in the appeal.
14. Orders accordingly.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 22ND JUNE 2023

AGNES KITIKU NZEI

JUDGE

ORDER

This Ruling has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of the applicable Court fees.

AGNES KITIKU NZEI

JUDGE

Appearance:

Miss Khadija for Appellant

Miss Chano for Respondent

